

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of September 6<sup>th</sup>, 2013 wherein the ministry determined the appellant was ineligible for disability assistance as a sole recipient because the appellant has not applied for assistance on behalf of the entire family unit as set out in section 5(1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

The ministry is satisfied that:

- the appellant's living arrangement with his roommate meets the definition of a dependant under section 1 Employment and Assistance for Persons With Disabilities Act (EAPWDA) and therefore they are a family unit;
- the appellant has been residing with another person for at least 3 consecutive months of the last 12 months and that the appellant's living arrangement demonstrates financial and social and familial interdependence consistent with a marriage-like relationship as stated in section 1.1(2) EAPWDA.

## PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Act (EAPDWA), section 1 and 1.1  
Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 5

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Bank statements for period of May 2013 to August 2013 – 2 pages – no name or address is shown;
- Notice of Rent Increase dated May 24<sup>th</sup>, 2012 in name of appellant's roommate – residence #2;
- Condition of Inspection report, undated, signed by the appellant's roommate for residence #1;
- Residential Tenancy Agreement Addendum, undated, signed by appellant's roommate – residence #1;
- Residential Tenancy Agreement dated April 8<sup>th</sup>, 2010 for residence #1 showing the appellant and his roommate as tenants. The agreement is only signed by the appellant's roommate;
- Vehicle insurance and Owner's Certificate (for 2013) in name of appellant showing his address as the same as residence #2;
- Application for private automobile insurance dated August 19<sup>th</sup>, 2013 in the appellant's name and address as residence #2. The application shows both the appellant and his roommate as vehicle operators;
- Vehicle insurance and Owner's Certificate (for 2014) in name of appellant showing his address as residence #2;
- Prescription receipt dated August 4, 2013 in the appellant's name showing address as residence #2;
- Care Card in appellant's name. The number is not completely clear but appears to be the same PHN that is on the prescription receipt;
- Appellant's Social Insurance Card;
- Appellant's Driver's license showing address as residence #2;
- Letter to appellant dated August 9<sup>th</sup>, 2013 from ministry with a Financial Eligibility Review Checklist attached requesting information on the appellant's marital status.
- Shelter Information form dated July 27, 2010 in the appellant's name showing his address as residence #2, the same address that appears on his driver's license and the vehicle registration form.
- Request for Reconsideration dated August 28<sup>th</sup>, 2013.

The appellant is a single recipient of disability assistance. The ministry received information that the appellant was living in a common-law relationship with his roommate. The ministry sent a letter to the appellant requesting that he provide various documents to establish whether or not his roommate met the definition of being the appellant's spouse as defined in the EAPWDA. The appellant called the ministry and spoke to an investigator (IO). The ministry states that at this time the appellant told the IO that he and his roommate have lived together for several years but the relationship is not sexual; that the appellant and his roommate are known in the community as a couple; that he does rely on her at times for financial assistance; that the appellant and his roommate rent a one bedroom apartment but he had converted the closet into his bedroom; that all household expenses are shared equally. The IO spoke to the appellant's landlord who confirmed that the appellant's roommate pays the full rent and that the appellant and the roommate share the same surname on the apartment intercom buzzer even though the surnames are different. In a subsequent interview between the IO and the appellant, the appellant again acknowledged that he and his roommate had been living together for several years; that the deposits into his account were cash advances on his credit card; that the household bills are in her name and you give her your share; and that you share household duties.

The appellant did not attend the hearing and, being satisfied the appellant was notified of the date and time, the hearing proceeded under section 86(b) EAR.

In the Request for Reconsideration the appellant stated that "I never said that people think we are a couple or for the management company. I was just talking to the manager 1 ½ weeks ago I am also on the lease agreement my account shows that to make it through month to month that I do get cash advances".

In the Notice of Appeal the appellant stated "I am not in a dependency (sic) relationship".

The ministry relied on the facts as stated in the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of September 6<sup>th</sup>, 2013 wherein the ministry determined the appellant was ineligible for disability assistance as a sole recipient because he has not applied for assistance on behalf of the entire family unit as set out in section 5(1) EAPWDR.

The legislation considered:

### **EAPWDA**

#### Interpretation

#### Section 1 (1)

In this Act:

dependant, in relation to a person, means anyone who resides with the person and who is the spouse of the person,

family unit means an applicant or a recipient and his or her dependants;

### **Meaning of spouse**

#### Section 1.1

(1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if

(a) they are married to each other, or

(b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

(2) Two persons who reside together, including persons of the same gender, are spouses of each other for the purposes of this Act if

(a) they have resided together for at least

(i) the previous 3 consecutive months, or

(ii) 9 of the previous 12 months, and

(b) the minister is satisfied that the relationship demonstrates

(i) financial dependence or interdependence, and

(ii) social and familial interdependence,

consistent with a marriage-like relationship.

### **EAPWDR**

#### **Applicant requirements**

#### Section 5

For a family unit to be eligible for disability assistance or a supplement, an adult in the family unit must apply for the disability assistance or supplement on behalf of the family unit unless

(a) the family unit does not include an adult, or

(b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult applicant.

The issue in the matter, determining if the ministry reasonably found that the appellant is ineligible for disability assistance because he did not apply on behalf of the family unit is two-fold: 1) the appellant and roommate resided together for at least the previous 3 consecutive months of 9 of the previous 12 months, section 1.1(2)(a) EAPWDA; and 2) does the appellant's relationship with his roommate demonstrate financial dependence or interdependence, and social and familial interdependence as defined under section 1.1(2)(b) EAPWDA.

**The living arrangements:**

The appellant does not argue with the ministry's position he has lived with his roommate for several years.

Therefore, the panel finds that the ministry reasonably determined the appellant's roommate meets the definition of a spouse as defined in section 1.1(2)(a) EAPWDA.

**Financial Interdependence:**

The ministry's position is that the relationship between the appellant and his roommate demonstrates financial interdependence; that the appellant receives financial assistance from his roommate by getting money from her anytime that he needs some; that the roommate pays the full rent to the landlord; that there is no record in the bank statements of the appellant's rent payments to her; that all the bills are in the roommate's name and that the appellant pays her his share.

The appellant's position is that he utilizes cash advances from his bank to make it through from month to month and that he is not in a dependent relationship.

The panel finds the ministry's position is supported by the appellant's statements and his bank statements; together, this information demonstrates that the appellant and his roommate are financially interdependent upon one another which is not consistent with that of roommates but is consistent with a marriage-like relationship.

The panel finds the ministry's decision that the appellant's relationship with his roommate demonstrates financial interdependence was reasonable.

**Social and Familial Interdependence:**

The ministry's position is that both the appellant and his roommate share the same last name on the apartment intercom buzzer which demonstrates that he and his roommate appear as a couple in the community; that the appellant and his roommate have lived together for several years; that both names appear on the appellant's private insurance policy as a driver of the appellant's vehicle; that they share household duties; and, that the information initially received by the ministry indicated the appellant and his roommate were living in a common-law relationship.

The appellant's position is that he is not in a dependency relationship.

The panel finds the ministry's position is supported by the appellant's statements as documented in the ministry's records and without any and without any evidence to the contrary from the appellant the panel has relied on the appellant's statements made to the IO, together with the information respecting the names on the intercom panel and the insurance documents.

The panel finds that the ministry reasonably determined that this information demonstrates that the relationship between the appellant and his roommate demonstrates social and familial interdependence consistent with a marriage-like relationship.

Section 5 EAPWDR states that for a family unit to be eligible for disability assistance or a supplement, an adult in the family unit must apply for the disability assistance or supplement on behalf of the family unit unless

- (a) the family unit does not include an adult, or
- (b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult applicant.

The appellant is receiving disability assistance as a single recipient. The panel finds that the ministry

reasonably determined the appellant's roommate meets the definition of a spouse under section 1.1(2) EAPWDA and therefore is a dependant and the appellant is required to apply for disability assistance on behalf of the family unit.

The panel finds the ministry's decision to determine that the appellant was not eligible for disability assistance because he did not apply on behalf of the family unit in accordance with section 5 EAPWDR was reasonable.

Therefore, the panel finds that based on the evidence the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision and confirms the decision pursuant to section 24(1)(b) and section 24(2)(a) of the Employment and Assistance Act.